IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL REVISION APPLICATION NO. 3 OF 2004.

Umakant Naik, r/o H. No.
343, Maina Navelim,
Sanquelim, Bicholim. ... Applicant.

Versus

State through Public Prosecutor. ... Respondent.

Mr. Rohit Bras de Sa, Advocate for the Applicant.

Mr. S.N. Sardessai, Public Prosecutor for the Respondent/State.

Coram : P.V. HARDAS, J.

Date : 20th April 2004.

ORAL JUDGMENT.

The applicant, who stands convicted by the Judicial Magistrate, First Class, Ponda, for offences punishable under Sections 279, 337, 338 and 304-A of the Indian Penal Code and sentenced to one month's simple imprisonment and fine of Rs. 500/-, in default, simple imprisonment for 15 days; fine of Rs. 500/-, in default, simple imprisonment for 15 days; simple imprisonment for one month and fine of Rs. 500/-, in default, simple imprisonment for 15 days and simple imprisonment for 4 months and fine of Rs. 1,000/-, in default, simple imprisonment for one month respectively, by Judgment, dated 21st October 2002, in Criminal Case No. 141/S/97/B and confirmed in appeal by the Sessions Judge, North Goa, Panaji, by Judgment, dated 21st January 2004, in Criminal Appeal No. 73 of 2002, has filed this Criminal Revision Application assailing the

conviction and sentences.

2. The facts, in brief, as are necessary for the decision of this revision, are stated hereunder:-

On 25th July 1997, at about 1.00 p.m., the accused is alleged to have driven his minibus bearing registration No. GDS 2479 in a rash and negligent manner while proceeding from Bicholim to Ponda and dashed against a tree, as a result of which 3 passengers died and several passengers travelling in the minibus sustained grievous injuries. In order to bring home the charge against the accused, the prosecution examined 22 witnesses. From amongst the passengers in the bus, who were examined as witnesses, the trial Court as well as the appellate Court placed implicit reliance on the testimony of P.W.10 Kalidas Gaude. The learned trial Court, therefore, convicted and sentenced the appellant and on an appeal being carried to the appellate Court, the learned Sessions Judge, Panaji, dismissed the appeal confirming the conviction and sentence.

3. The evidence of P.W.10 Kalidas reveals that on the day of the incident he boarded the bus at Kumyem Usgao. The bus was proceeding in a fast speed at about 80 kilometres per hour. The accident occurred on account of the driver of the bus trying to play the

cassette player and in that process he lost control of the bus due to which it dashed against a tree. In the cross-examination he has admitted that he was standing in the bus towards the side of the conductor, which would mean on the left hand side of the bus while the steering wheel is located on the right side. He denied the suggestion that the bus was not proceeding in a fast speed. Apart from this witness, no other witness states about the fact that the driver of the bus lost control of the bus on account of his attempt to play the cassette player. As stated, both the Court below had placed implicit reliance on the testimony of P.W.10 Kalidas for sustaining the conviction.

4. Mr. Rohit Bras de Sa, the learned counsel appearing on behalf of the applicant, has urged before me that P.W.10 Kalidas has no doubt stated that the accident occurred on account of the accused attempting to play the cassette player and as a result of which the bus went out of control and dashed against a tree. He has further submitted that though this witness was cross-examined by the counsel of the accused, an important fact has gone unnoticed and that is that this witness had not stated in his Statement under Section 161 that the accident had occurred on account of the accused attempting to play the cassette player. He, thus, submits that the conviction of the applicant is

based on the statement of the witness, which has a material omission amounting to contradiction vis-a-vis his statement.

5. In order to satisfy myself, I have perused the Statement under Section 161 of P.W.10 Kalidas, dated 9th August 1997. It is true that in his statement he has not referred to the accused attempting to play the cassette player as a result of which the accident occurred. However, since the omission was not duly proved, the Court cannot look into this statement and hold that the said statement is an omission, particularly, when no attempt has been made for the exercise of such power on account of the fact of either the accused not being represented by an advocate at the trial or was being represented in the trial by an inexperienced advocate or such like instance. Therefore, though the portion of the testimony of the witness on which the two Courts below have placed implicit reliance, amounts to an omission vis-a-vis his statement under Section 161, the same cannot be considered for the purpose of discrediting this witness. However, if what this witness states was true that the accident occurred on account of the accused attempting to play the cassette player, curiously, this is not stated by any of the other witnesses, who were passengers in the bus and who were examined as witnesses

by the prosecution. All witnesses other than P.W.10 Kalidas give different versions. None of the witnesses state the cause of the accident. There is no evidence in respect of the fact that the accused drove the bus in a rash and negligent manner. The conviction rests principally on the solitary testimony of P.W.10 Kalidas. According to me, in the absence of any corroboration from other witnesses, in the peculiar facts of this case, it is unsafe to place implicit reliance on the testimony of P.W.10 Kalidas.

6. In view of what has been held by me above, therefore, according to me, both the Courts below were in error in convicting and sentencing the applicant as aforestated on the basis of the evidence of P.W.10 Kalidas. High speed by itself does not mean that the vehicle was driven in a rash or negligent manner. The prosecution has to lead some evidence in respect of the rash or negligent manner in which the vehicle was driven. The prosecution in the present case has utterly failed to establish by cogent and reliable evidence the aforesaid fact. According to me, the applicant is entitled to benefit of doubt and, accordingly, Criminal Revision Application is allowed. The conviction and sentence as passed by the two Courts below are quashed and set aside and the applicant is acquitted of the offences with which he was charged and convicted. Fine,

if paid, be refunded to the applicant. Bail Bond stands cancelled.

(P.V. HARDAS)
JUDGE.

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